

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

CATHY CARTER,

Plaintiff,

V.

PAUL HOWARD, in his individual
and official capacity,

Defendant.

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CIVIL ACTION NO.

1:20-cv-01674-TWT-JSA

**DEFENDANT HOWARD’S RESPONSE TO PLAINTIFF’S OBJECTION
TO THE MAGISTRATE’S ORDER ON HER MOTION FOR LEAVE TO
AMEND THE COMPLAINT**

COMES NOW, Defendant Paul Howard, with his Response to Plaintiff's
Objection to the Magistrate's Order on her Motion for Leave to Amend, [Doc.
70], showing this Honorable Court as follows:

Defendant sets forth a brief response only to show that Plaintiff's Objection does not stray close to meeting the burden necessary to overturn an Order issued by the Magistrate. On January 6, 2022, Magistrate Judge Anand issued an Order denying Plaintiff's Motion for Leave to Amend. [Doc. 69]. Plaintiff filed her Objection on January 10, 2022. [Doc. 70].

In Plaintiff's Motion for Leave to Amend, she concedes that the claim she now attempts to add, retaliation under the equal protection clause, is not

based on newly discovered evidence or a change in substantive law. Rather, Plaintiff seeks to amend the Complaint based on claims that she concedes she was aware of at the outset of the case.

A district court reviewing a magistrate judge's order is, in general, limited by statute and rule to reversing that order only if it is clearly erroneous or an abuse of discretion. 28 U.S.C. § 636(b)(1)(A); Fed. R. Civ. P. 72(a).

The Order here was well reasoned and correctly applicable law to the issue before the Court. While Plaintiff argues that the Order was erroneous, the case Plaintiff cites in support simply does not stand for this proposition. *Tonkyro v. Sec., Dept. of Veterans Affairs*, 995 F.3d 828 (11th Cir. 2021). The *Tonkyro* case examined the standard for causation. The court never analyzed or approved of the pleading standard urged by the Plaintiff. Nor was the pleading standard either being challenged or at issue. Moreover, Plaintiff's assertion that she was unable to clearly identify her claims at the outset of the case so the evidentiary standards in play were clear, is meritless and fantastical.

Again, Plaintiff's Motion was not based on any new evidence or new facts or a change in the substantive law. And as Plaintiff has made clear, she was aware of the retaliation claim when the Complaint was filed, yet she waited twenty months to move for leave to amend. That basis alone is grounds to affirm the magistrate's Order. In short, the magistrate's ruling was based

upon a firm interpretation of the law and a context-specific examination of the facts surrounding Plaintiff's proposed amendment. Plaintiff's Objection ignores the relevant facts that contributed to the magistrate's holding. Plaintiff has not set forth any argument sufficient to overcome the substantial burden of showing a magistrate's ruling to be clearly erroneous or an abuse of discretion.

Defendant respectfully requests that this Honorable Court deny Plaintiff's Objection to the Magistrate's Order and affirm Magistrate Anand's well-reasoned opinion.

This 24th day of January, 2022.

HENEFELD & GREEN, P.C.

/s/ Noah Green

Noah Green

Georgia Bar No. 468138

Attorney for Defendant Paul Howard

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CERTIFICATE OF COMPLIANCE

Pursuant to Local Rule 7.1(D), I hereby certify that the foregoing has been prepared in compliance with Local Rule 5.1(B) in 13-point Century Schoolbook type face.

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CERTIFICATE OF SERVICE

This is to certify that I have this day served counsel for the opposing parties with a copy of **DEFENDANT HOWARD'S RESPONSE TO PLAINTIFF'S OBJECTION TO THE MAGISTRATE'S ORDER ON HER MOTION FOR LEAVE TO AMEND THE COMPLAINT**, by filing same with the Clerk of Court using the CM/ECF system which will send notification of such filing to all counsel of record.

This 24th day of January, 2022.

HENEFELD & GREEN, P.C.

/s/ Noah Green

Noah Green

Georgia Bar No. 468138

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